



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 18-3

May 3, 2022

Investigation by the Department on its Own Motion into Accounting Practices and
Recordkeeping of Telecommunications Carriers

NOTICE OF PROPOSED REQUIREMENTS AND FURTHER REQUEST FOR COMMENT

Pursuant to the *Investigation by the Department of Telecommunications and Cable on its Own Motion into Accounting Practices and Recordkeeping of Telecommunications Carriers*, D.T.C. 18-3, *Notice of Inquiry* (June 25, 2018) (“*Notice*”), *Order Opening Notice of Inquiry* (“*Order*”) (June 25, 2018), and *Further Request for Comment* (“*Further Request*”) (Oct. 22, 2019) (together, “*NOI*”), the Massachusetts Department of Telecommunications and Cable (“*Department*”) proposes data reporting requirements for certain pole¹ owners. Specifically, the Department proposes to require certain telecommunications pole owners, to be specified in this proceeding (“*Telecommunications Pole Owners*”), to file a “*Pole Owner Report*” annually with the Department, in the form attached hereto. In addition, the Department proposes requiring Telecommunications Pole Owners to maintain certain records related to these filings. The Department seeks comment as detailed below and will hold a public hearing to consider these proposals. Additional details on the public hearing, the public comment process, and the intervention process can be found in the attached Notice of Public Hearing.

¹ All references to poles in this document include ducts, conduits, and rights of ways, all as defined in G.L. c. 166, § 25A.

I. BACKGROUND AND PROCEDURAL HISTORY

Federal law grants the Federal Communications Commission (“FCC”) the authority to regulate the rates, terms, and conditions for pole attachments except in those states which have certified to the FCC that they regulate such rates, terms, and conditions (“Reverse Preemption States”). 47 U.S.C. § 224(b)-(c). Massachusetts regulates pole attachment rates, terms, and conditions and has certified this to the FCC. *See* G.L. c. 166, § 25A; *States that have Certified that they Regulate Pole Attachments*, WC Docket No. 20-302, *Public Notice* (Mar. 19, 2020); 220 C.M.R. 45.00. The Department or the Department of Public Utilities (“DPU”)² determine and enforce reasonable rates, terms, and conditions for the use of utility poles for attachments when the utility and an attacher disagree on such rates, terms, or conditions. G.L. c. 166, § 25A; 220 C.M.R. 45.00. If the Department determines that a rate, term, or condition is not just and reasonable, the Department may prescribe a reasonable rate, term, or condition and may: (1) terminate the unreasonable rate, term, or condition, and (2) substitute in the attachment agreement a reasonable rate, term, or condition established by the Department, or (3) order other relief the Department finds appropriate. 220 C.M.R. § 45.07. Neither G.L. c. 166, § 25A nor 220 C.M.R. 45.00 prescribes a specific method for calculating pole attachment rates. Instead, the Department established a formula, which attachers and pole owners continue to rely upon to calculate pole attachment rates in the Commonwealth (the “Massachusetts Formula”).³

² Upon the dissolution of the Massachusetts Department of Telecommunications and Energy, its two successor agencies, the Department and the DPU, divided the responsibility to resolve pole attachment disputes based on the primary purpose of the attachment at issue. *See* Memorandum of Agreement between DPU and DTEC Regarding the Regulation of Attachments to Utility Poles, Ducts, and Conduits Pursuant to G.L. c. 166, § 25A and Double Poles Pursuant to G.L. c. 164, § 34B (Oct. 14, 2008) (“MOA”). In brief, disputes involving attachments whose primary purpose is telecommunications—regardless of who owns the pole at issue—are decided by the Department, while disputes involving attachments whose primary purpose is related to the distribution of electricity or natural gas are decided by the DPU. Noting here the Department and the DPU’s joint jurisdiction over pole attachments, for administrative ease, the Department will refer only to “the Department” in this document.

³ *See, e.g., Cablevision of Boston Co. v. Boston Edison Co.*, D.P.U./D.T.E. 97-82, *Order* at Table 1 (Apr. 15, 1998) (“*Cablevision*”). The Massachusetts Formula multiplies the product of the cost of an installed pole, calculated as the

In the *NOI*, the Department sought comment on several separate but related issues. The Department asked whether pole owners should be required to file publicly accessible reports with the Department containing the data required by the Massachusetts Formula. *Order* at 2. This first inquiry was in response to a series of FCC decisions reducing, changing, or eliminating reports the FCC previously required of pole owners,⁴ which could satisfy Massachusetts's requirement that complaints concerning the rates, terms, or conditions of pole attachments be based on publicly available data. *Greater Media, Inc. v. New England Tel. & Tel. Co.*, D.P.U. 91-218, *Order* at 34 (Apr. 17, 1992) (“*Greater Media*”); 220 C.M.R. § 45.04(2)(d). Second, the Department asked how it should administer the filing and public availability of pole owner reports if it chooses to adopt a reporting requirement related to pole attachment rates. *Order* at 3. Third, the Department sought comment on whether it should require pole owners to maintain the

average cost of the poles as the company recorded such cost at the time of installation (A), and the carrying charges, as a rate (B), by the percentage of the usable pole space that the attachment occupies (C).

$$((A \times B)) \times C = \text{pole attachment rate}$$

Cablevision at ¶ C.1.a. The Massachusetts Formula is based on the formula used by the FCC to set pole attachment rates but differs slightly in some details. *Id.*

⁴ *Implementation of the Telecomms. Act of 1996, Report & Order*, 12 FCC Rcd. 8071 (1997); 1998 *Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exch. Carriers, Report & Order* in CC Docket No. 98-137 and *Memorandum Opinion & Order* in ASD 98-91, 15 FCC Rcd. 242 (1999); *In re Revisions of ARMIS Annual Summary Report, Order*, DA 00-2770 (2000); *In re Revisions of ARMIS Annual Summary Report, Order*, DA 01-2854 (2001); *In re 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements & ARMIS Reporting Requirements for the Incumbent Local Exch. Carriers, Order on Reconsideration*, FCC 02-68 (2002); *In re ARMIS Annual Summary Report, Order*, DA 00-3527 (2002); *In re Revisions of ARMIS Annual Summary Report, Order*, DA 03-3912 (2003); *In re Revisions of ARMIS Annual Summary Report, Order*, DA 04-3843 (2004); *In re Revisions of ARMIS Annual Summary Report, Order*, DA 05-3162 (2005); *In re Section 272(f)(1) Sunset of the BOC Separate Affiliate & Related Requirements, Report & Order & Memorandum Opinion & Order*, FCC 07-159 (2007); *In re Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 For Enforcement of Certain of the Comm’n’s Cost Assignment Rules, Memorandum Opinion & Order*, FCC 08-120 (2008); *In re Serv. Quality, Customer Satisfaction, Infrastructure & Operating Data Gathering, Memorandum Opinion & Order & Notice of Proposed Rulemaking*, FCC 08-203 (2008); *In re Petitions of Qwest Corp. for Forbearance from Enforcement of the Comm’n’s ARMIS & 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), Memorandum Opinion & Order*, FCC 08-271 (2008) (“*Qwest Order*”); *In re Revisions of ARMIS Annual Summary Report, Order*, DA 14-1387 (2014); *In re Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecomms. Regulations, Order*, FCC 13-69 (2014) (“*USTelecom Order*”); *In re Comprehensive Review of the Part 32 Unif. Sys. of Accounts, Report & Order*, 32 FCC Rcd. 1735 (2017) (“*2017 FCC Order*”).

system of accounts which the FCC required of certain carriers prior to the *2017 FCC Order*. *Id.* In its *2017 FCC Order*, the FCC allowed price cap carriers to stop maintaining financial records that complied with 47 C.F.R. Part 32, commonly known as the Uniform System of Accounts (“USOA”), and to file various financial reports using any accounting system, so long as it complied with Generally Accepted Accounting Principles (“GAAP”). *2017 FCC Order* ¶ 2.

With these inquiries, the Department’s goal remains to make the data necessary to calculate pole attachment rates pursuant to the Massachusetts Formula publicly available. *Cablevision* at 19. The public availability of this data allows existing and potential pole attachers to evaluate pole attachment rates themselves, without having to file a complaint with the Department. *Id.* By minimizing the need for formal adjudications, the public availability of the data required by the Massachusetts Formula minimizes the burdens on all stakeholders. *Id.* Pole attachment rate complaints must use data derived from publicly available reports filed with state or regulatory agencies. 220 C.M.R. § 45.04(2)(d)(8). The Department’s proposed Pole Owner Report would provide one source of data with which existing or potential pole attachers could satisfy this requirement. *See Petition of New England Cable Television Ass’n, Inc.*, D.P.U. 930, *Order* at 14-15 (July 18, 1984) (recognizing that multiple methods and data sources may calculate a reasonable pole attachment rate). A determination of whether or how the Department might use such data to adjudicate a future pole attachment dispute or of the admissibility of data from other sources during a pole attachment complaint proceeding is beyond the scope of this proceeding.

In response to the *NOI*, the Department received comments from the DPU, Verizon New England Inc. (“Verizon”), and the New England Cable & Telecommunications Association, Inc. (“NECTA”). Comments of the DPU (July 25, 2018) (“DPU Comment”); Comments of Verizon

New England, Inc. (July 25, 2018) (“Verizon Comment”); Written Comments of NECTA (July 25, 2018) (“NECTA Comment”). The Department also received reply comments from each of these initial commenters as well as from CenturyLink Communications, LLC and affiliates (“CenturyLink”), and a letter sur-reply from Verizon. Reply Comments of the DPU (Aug. 9, 2018) (“DPU Reply Comment”); Reply Comments of Verizon (Aug. 9, 2018) (“Verizon Reply Comment”); Reply Comments of NECTA (Aug. 9, 2018) (“NECTA Reply Comment”); Reply Comments of CenturyLink (Aug. 9, 2018) (“CenturyLink Reply Comment”); Letter from Alexander W. Moore, Assistant Gen. Counsel, Verizon, to Shonda D. Green, Sec’y, Dep’t (Aug. 24, 2018) (“Verizon Letter”). The Attorney General’s Office submitted a comment indicating its interest in the proceedings but did not provide any substantive recommendations. Letter from Maura Healey, Mass. Att’y Gen., to Shonda D. Green, Sec’y, Dep’t (July 25, 2018). On October 22, 2019, the Department issued a Further Request for Comment. *Further Request*. In response, the DPU, Verizon, and NECTA each submitted both comments and reply comments. Further Comments of the DPU (Nov. 21, 2019) (“DPU Further Comment”); Further Comments of Verizon (Nov. 21, 2019) (“Verizon Further Comment”); Further Comments of NECTA (Nov. 21, 2019) (“NECTA Further Comment”); Further Reply Comments of the DPU (Dec. 19, 2019) (“DPU Further Reply Comment”); Further Reply Comments of Verizon (Dec. 19, 2019) (“Verizon Further Reply Comment”); Further Reply Comments of NECTA (Dec. 19, 2019) (“NECTA Further Reply Comment”).

II. PROPOSED POLE OWNER REPORT

The Department proposes to require Telecommunications Pole Owners, with that class to be defined in this proceeding,⁵ to file a Pole Owner Report for each calendar year no later than

⁵ See *infra* Section VI.

March 1 of the next calendar year. *See* G.L. c. 159, § 12(d); G.L. c. 166, § 25A; G.L. c. 25C, § 9. The Department proposes that the Pole Owner Report shall be in the form attached hereto as an Exhibit. The Department seeks comment on this proposal as further detailed below.

A. Positions of the Parties

Verizon claims that the Department does not need to require Verizon to report any additional data relevant to pole attachment rates because Verizon has been and promises to continue to file FCC Form 43-01 for Massachusetts with the FCC. Verizon Comment at 3. Should the Department determine that additional reporting is required, Verizon suggests that the Department adopt a reporting requirement that is “based on the FCC’s rule.” *Id.* at 4. Verizon suggests any such reporting should only be required when Verizon changes its pole attachment rates. *Id.*

NECTA emphasizes that financial records necessary to determine whether pole attachment rates are just and reasonable must be publicly available, to meet the Department’s goal of allowing pole owners and attachers to negotiate such rates without Department intervention. NECTA Comment at 3-5. NECTA asserts that unless the Department requires pole owners to file such data, the data would not be publicly available, because the FCC no longer requires such filings for Massachusetts. *Id.* at 7. NECTA also questions the level of specificity of FCC Form 43-01 if not compiled pursuant to the USOA. *Id.* at 7, 12. Finally, NECTA argues that any new financial reporting requirement be annual, to allow attachers to determine whether unchanged pole attachment rates should have declined. NECTA Reply Comment at 3-5.

The DPU submits that the Department must require Verizon to submit financial data to the Department and asserts that such data should be USOA-based. DPU Reply Comment at 4.

B. Analysis

Although the Department appreciates Verizon's promise to continue to file FCC Form 43-01 for Massachusetts with the FCC, the Department does not believe in this instance that it should rely on voluntary filings to another agency to carry out the Department's statutorily mandated functions. There are no other reports filed with a state or federal agency that contain the pole attachment data required for a complaint to be filed pursuant to 220 C.M.R. § 45.04. As a result, should Verizon ever decide not to file FCC Form 43-01 for Massachusetts with the FCC, which Verizon may do at any time without notice either to the FCC or to the Department, there would be no way for an attacher to a Verizon-owned pole to file a pole attachment rate complaint with the required supporting data. *See* 220 C.M.R. § 45.04(2)(d)(8) (requiring that the data contained in a complaint be derived from publicly available reports filed with the Department, the DPU, the FCC, the Federal Energy Regulatory Commission ("FERC"), "or other reports filed with state or regulatory agencies"). When the FCC eliminated financial reporting requirements for Reverse Preemption States like Massachusetts it acknowledged that those states might need to establish their own financial reporting requirements to collect the data necessary to regulate pole attachments. *Qwest Order* ¶ 14. With this Notice of Proposed Requirements, the Department proposes to do so.

Even if Verizon continued to file FCC Form 43-01 for Massachusetts with the FCC, the form may not contain the level of specificity needed for the Massachusetts Formula. The Department's previous reliance on FCC Form 43-01 made it necessary to solicit data for pole attachment adjudications through discovery. *See Greater Media* at 35-39; *infra* Section V (discussing this issue further). Required data has sometimes been unavailable even then, causing the Department to render decisions based on estimates or approximations. *See Greater Media* at

35-39 (estimating the mean duct feet of conduit used for maintenance and municipal use in the absence of such data reported in the FCC's Form M). Further, the Massachusetts Formula was based on but differed slightly from the formula the FCC used to set pole attachment rates at the time. *See, e.g., Cablevision* at ¶ C.1.a. With the passage of time, those differences have increased. *See, e.g., In re Implementation of Section 224 of the Act A Nat'l Broadband Plan for our Future, Order on Reconsideration*, FCC 15-151 (2015) (revising the FCC's telecommunications pole attachment rate formula). For these reasons, even if Verizon continues to file FCC Form 43-01 for Massachusetts, the form may not be the best way for the Department to fulfill its regulatory and adjudicatory responsibilities. The Department intends for the Pole Owner Report, combined with the proposed maintenance-of-records obligations, to both improve the efficiency of its pole attachment adjudications and the specificity of its rate determinations.

Although Verizon argues that any reporting the Department adopts should be required only when Verizon changes its pole attachment rates, the Department proposes that the proposed Pole Owner Report be filed annually on March 1. The Department seeks comment on this annual deadline. Evaluations of a pole owner's pole attachment rates pursuant to the Massachusetts Formula may vary continuously as the pole owner's financial data changes. As commenters have noted, pole attachment rates may need to decrease over time to remain just and reasonable. NECTA Reply Comment at 4. Stakeholders should not have to analyze a pole attachment rate based on stale data.

In sum, the proposed Pole Owner Report would ensure the availability of at least one current, publicly available data source with which stakeholders could evaluate whether pole attachment rates are just and reasonable. We seek comment on this proposal.

III. ACCOUNTING

In the *NOI*, the Department also sought comment on whether to require pole owners to maintain the system of accounts which the FCC required of certain carriers, including Verizon, prior to the *2017 FCC Order* or to allow pole owners to maintain a system of accounts using financial data that is aggregated, calculated, and presented in accordance with GAAP. *See 2017 FCC Order* ¶ 2.

A. Positions of the Parties

NECTA argues that the Department should require pole owners to report financial data necessary to determine whether pole attachment rates are just and reasonable, calculated using either USOA or a similar accounting system. NECTA Comment at 8. NECTA argues that such data provides the level of specificity necessary for the Department or others to calculate pole attachment rates accurately, but that data calculated pursuant to GAAP-compliant accounting systems would not. *See id.* NECTA argues that GAAP-compliant financial data could aggregate expenses at too high a level, resulting in the overstatement of costs or the double recovery of costs already recovered through depreciation or in inflated carrying charge expenses. *Id.* NECTA also argues that adopting the FCC’s Implementation Rate Difference (“IRD”)⁶ is both insufficient, as it would result in inaccurate estimates of pole attachment rates, and improper, as it would result in higher rates than those calculated using USOA-compliant data. *See id.* at 8. In addition, NECTA argues that although pole owners may change GAAP-compliant accounting over time, the USOA’s list of accounts only changes when the regulator maintaining the list of accounts changes how it is to be completed. Thus, the USOA’s list of accounts is more likely to

⁶ For non-Reverse Preemption States, the FCC required any carrier who stopped using USOA to calculate the difference between its pole attachment rates using USOA and its rates using its new accounting system in the year prior to the switch to the new accounting system—that carrier’s IRD—and required such carriers to reduce their pole attachment rates accordingly over the next twelve years. *2017 FCC Order* ¶¶ 36-37.

allow for the analysis of changes in a pole owner's pole attachment rates over time than would an accounting system that is merely GAAP-compliant. NECTA Reply Comment at 5-6.

The DPU asks the Department to require Verizon "to use USOA accounts and procedures in Massachusetts that relate to the calculation of attachment rates under the Massachusetts Formula." DPU Comment at 4. The DPU argues that Verizon must be required to use USOA-based reporting because other Massachusetts pole owners, such as electric utilities, continue to calculate their pole attachment rates using USOA accounts. *Id.* Further, the DPU maintains that Department precedent requires the Department calculate pole attachment rates using USOA-based financial data. DPU Reply Comment at 2 n.2.

Verizon acknowledges that there might be an initial increase in pole attachment rates calculated using merely GAAP-compliant data, rather than USOA-based data, but believes that any such increase in pole attachment rates would be minimal and would decline over time. Verizon Reply Comment at 1-2, 4. Verizon suggests that if the Department is concerned about potential "rate shock," that the Department adopt policies similar to those in the IRD that the FCC adopted. Verizon Comment at 5. Verizon disputes the existence of any legal requirement that it maintain financial records pursuant to USOA or that the Department evaluate pole attachment rates pursuant to 220 C.M.R. 45.00 using only USOA-based data. Verizon Letter at 1-2.

CenturyLink agrees with Verizon, suggesting that if the Department is concerned with rate shock, it could adopt a modified IRD, but also noting that pole attachment rates in Massachusetts may rarely be adjusted. CenturyLink Reply Comment at 3.

B. Analysis

There is no generally applicable Massachusetts law requiring telecommunications carriers to maintain financial records using a particular accounting system, and there is no requirement that pole attachment rates in Massachusetts be calculated pursuant to particular accounting rules. *See, e.g., Joint Investigation by the DPU & the Dep't, on their own motions, instituting a rulemaking pursuant to Exec. Order No. 562 to Reduce Unnecessary Regulatory Burden, G.L. c. 30A, § 2, 220 CMR 2.00, & 207 CMR 2.00, to amend 220 CMR 45.00, D.P.U. 19-76-A/D.T.C. 19-4, Order Adopting Final Regulation at 18-19 (Dec. 7, 2021) ("19-76-A/19-4 Order"); Petition of New England Cable Television Ass'n, Inc., D.P.U. 930, Order at 14-15 (July 18, 1984) ("930 Order"); Verizon Letter at 1-2.* The DPU argues that both the Department and the DPU should adjudicate pole attachment disputes using USOA-based data, noting that electric distribution companies and municipal lighting plants ("MLPs") in Massachusetts conform to USOA-based reporting requirements to calculate pole attachment rates.⁷ DPU Comment at 4. But the FCC's USOA to which carriers such as Verizon were subject prior to the *2017 FCC Order* is different from the FERC's USOA, which gas and electric distribution companies must still use to file annual returns with the FERC. *Compare* 47 C.F.R. pt. 32, *with* 18 C.F.R. pt. 101. Requiring Telecommunications Pole Owners to complete the proposed Pole Owner Reports using the FCC's USOA, therefore, would not achieve the DPU's goal of ensuring that all pole owners in Massachusetts—telecommunications pole owners and electric utility pole owners—report financial data pursuant to the same accounting rules.⁸ Moreover, however, the

⁷ The Department points out a potential factual dispute in the record on this point regarding MLPs. *See* Verizon Letter at 2 (stating, seemingly contrary to the DPU's position, that MLPs in Massachusetts do not always use USOA-based accounting).

⁸ The DPU also notes that the MOA requires any changes to the "regulations, policies, or procedures applicable to pole attachments to be jointly developed and promulgated" by the two agencies. DPU Further Reply Comment at 3. The DPU argues that "any revision to regulatory accounting or reporting requirements that affect the qualifying

Department finds no legal requirement that pole attachment rates in Massachusetts be calculated using data from a particular source or aggregated or calculated pursuant to particular accounting rules. *See 19-76-A/19-4 Order; 930 Order* (recognizing that multiple methods and data sources may be used to calculate a reasonable pole attachment rate); Verizon Letter at 1-2. Although the Department once used data collected by the FCC for adjudication of a pole attachment rate complaint, the Department did not limit itself to using data from that or similar FCC reports or data kept in a form then-required for such reports, either in that proceeding or otherwise. *See Greater Media*.⁹ As a result, the Department does not propose to impose requirements on the accounting methods Telecommunications Pole Owners may use to complete the proposed Pole Owner Report.

Further, the record in this proceeding does not contain evidence that the *2017 FCC Order*, adopted more than five years ago—and Verizon’s subsequent decision to cease using USOA—has impacted pole attachment rates in Massachusetts.¹⁰ *See* Verizon Comment at 4 (noting that Verizon has not raised pole attachment rates since 2010); CenturyLink Reply

inputs” to the Massachusetts Formula are subject to this joint action requirement. *Id.* The Department respectively submits that the proposed Pole Owner Reports would not change the Massachusetts Formula. As a result, the Department’s proposals are not subject to the MOA’s joint action requirement.

⁹ The DPU also cites to a Department Order for the proposition that Massachusetts law required telephone companies to file USOA-based reports. DPU Further Reply Comment at 2-3. That Order states in part: the “forms of accounts, records and memoranda prescribed for telephone companies shall be the forms heretofore prescribed by the Federal Communications Commission under its order #7C as a Uniform System of Accounts called ‘Issue of June 19, 1935, Effective January 1, 1936’ as amended and made effective January 1, 1937 by its Order #7D, together with all such additions and amendments thereto as have been, or which hereafter may be issued from time to time by either the Federal Communications Commission, or this Department.” But the Department ceased requiring such reports from telephone companies at least as early as 1995. As a result, it would seem that any such requirement contained in the referenced Order is void. Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, D.T.E. 01-31-Phase II, Verizon Alternate Regulation Plan at 5, ¶ S (“Verizon MA will be required to produce only such data as needed to establish compliance with the terms of all pricing rules otherwise specified in the Plan.”).

¹⁰ The Department notes that a recently filed pole attachment complaint objects to make-ready costs and not attachment rates. *See CRC Commc’ns d/b/a OTELCO v. Mass. Elec. Co. d/b/a Nat’l Grid*, D.T.C. 22-4, *Pole Attachment Complaint* (Apr. 15, 2022).

Comment at 3 (implying that pole attachment rates in Massachusetts may not increase simply because of the *2017 FCC Order*); *2017 FCC Order* ¶ 38 (noting the FCC’s expectations that shifting accounting methods “is unlikely to result in abrupt changes in pole attachment rates in the near term” and “that rates will remain steady over the long-run”). *But see* Verizon Reply Comments at 4 (acknowledging a theoretical impact on pole attachment rates). Attachment rates allowable under the Massachusetts Formula and attachment rates actually charged to attachers are not necessarily the same. *See A-R Cable Servs., Inc. v. Mass. Elec. Co.*, D.T.E. 98-52, *Order* at 7 (Nov. 6, 1998) (implying that the Massachusetts Formula is not required but is a standard that parties can use to negotiate just and reasonable pole attachment rates). Absent evidence of actual rate shock, the Department does not propose at this time to take steps to attempt to mitigate a merely theoretical rate increase due to a transition away from USOA.¹¹ If, however, because of data contained in the proposed Pole Owner Reports, complaints filed with the Department, or otherwise, the Department determines that a Telecommunications Pole Owner’s use of a particular accounting method has caused rate shock or otherwise unreasonable pole attachment rates, the Department may reexamine this decision or otherwise exercise its authority to determine a just and reasonable rate under G.L. c. 166, § 25A and 220 C.M.R. 45.00. *See, e.g.*, Verizon Comments at 5-6 (raising the possibility of the Department adopting the FCC’s 12-year IRD or something similar); CenturyLink Reply Comment at 3 (agreeing with Verizon); NECTA Comments at 13-14 (suggesting that the Department adopt a modified version of the FCC’s IRD).

¹¹ The Department notes the possibility that it may need to consider the applicability of the MOA in any such *ex ante* increase-mitigation efforts. Any such applicability may bring such efforts outside the scope of the proceeding regardless.

The Department recognizes that the Massachusetts Formula requires specific data. The proposed Pole Owner Report seeks to collect the data that is necessary to evaluate pole attachment rates pursuant to the Massachusetts Formula. We seek comment on these proposals.

IV. PUBLIC AVAILABILITY OF DATA

One of the goals of the Department's proposed reporting requirements is to ensure public availability of data relevant to pole attachment rates. *See* 220 C.M.R. § 45.04(2)(d)(8). Verizon acknowledges this goal and urges that any required reporting be presumably public, leaving pole owners to seek confidentiality for specific data during pole attachment proceedings, if necessary. Verizon Comment at 8, 9. NECTA, CenturyLink, and the DPU also argue in favor of keeping the relevant pole owner data publicly available. NECTA Comment at 4; CenturyLink Reply Comment at 2, 3; DPU Comment at 4, 5. The Department agrees with commenters and proposes to make Pole Owner Reports publicly available and to provide copies of such documents upon request. We seek comment on this proposal.

V. MAINTENANCE OF FINANCIAL RECORDS

The Department sought comment on whether to require pole owners to retain sufficient data and documentation of their accounting methods and procedures for use in the event the Department is called on to adjudicate a pole attachment complaint. *Order* at 3; *Notice* at 2.

A. Positions of the Parties

NECTA argues that relevant property records are necessary to allow attachers to rebut presumptions for pole height and appurtenances that the Department has adopted in previous cases, and to substantiate pole owners' pole counts and conduit lengths. NECTA Comment at 17. Verizon argues that there is no need for the Department to impose records retention rules because the FCC requires price cap carriers to maintain property records in an auditable manner,

pursuant to 47 C.F.R. § 32.2000(e)(8). Verizon Comment at 8. Verizon states that there is no reason to believe pole owners would not provide such data during a pole attachment complaint proceeding. *Id.*

B. Analysis

The Department has expressed a desire for more detailed or underlying financial data when adjudicating pole attachment complaints. *See, e.g., Greater Media* at 35-39 (estimating the mean duct feet of conduit used for maintenance and municipal use in the absence of such data in the FCC's Form M). The Department's adoption of presumptions for certain inputs in the Massachusetts Formula has often been the result of gaps in available data. *See, e.g., Cablevision* at 30 (establishing a rebuttable presumption for the value of appurtenances to be deducted from total net pole investment in the absence of the actual cost of such appurtenances in the record). Although Verizon may retain relevant financial data pursuant to existing FCC record retention requirements, as is the case with financial reporting generally, the Department does not believe that in this instance it should rely on FCC requirements to exercise its statutory authority over pole attachment rates. *See 2017 FCC Order* ¶ 21; 47 C.F.R. § 32.2000(e)(8). Further, as evidenced by the data shortfalls described above, even this FCC requirement may not require the maintenance of sufficient information to accurately calculate pole attachment rates using the Massachusetts Formula.

Accordingly, to ensure Telecommunications Pole Owners' ability to comply with the data production requirements of 220 C.M.R. § 45.04(2)(d) and to ensure maintenance of sufficient information to accurately calculate pole attachment rates using the Massachusetts Formula, the Department proposes to require each Telecommunications Pole Owner to retain data and documentation of the accounting methods and procedures used to allocate its costs as reflected in

its Pole Owner Report. *See* G.L. c. 159, § 12(d); G.L. c. 166, § 25A; G.L. c. 25C, § 9. This proposal includes any cost allocation manual and any relevant training materials, guidelines, or system documentation used to calculate data provided in the Pole Owner Report, including electronic copies of relevant systems, spreadsheets, and software. The Department proposes to require Telecommunications Pole Owners to keep these records with sufficient particularity to show fully the facts pertaining to all entries in these accounts. This shall include the actual money cost of (or the then current money value of any consideration other than money exchanged for) property at the time when it was purchased reported in Line A of the proposed Pole Owner Report. This record maintenance should provide the Department and attachers sufficient data to determine the most appropriate gross cost of poles or conduit when evaluating a pole attachment rate pursuant to the Massachusetts Formula. We seek comment on this proposal.

VI. APPLICABILITY OF THE PROPOSED REQUIREMENTS

The Department proposes to apply the above proposed requirements to all Telecommunications Pole Owners and seeks comment on how we define “Telecommunications Pole Owners” for purposes of these requirements. The record does not reveal any telecommunications carrier that owns poles in Massachusetts, other than Verizon, that currently files relevant financial reports with any federal or Massachusetts agency. Should the proposed requirements apply to all those persons that own a utility pole, as defined by G.L. c. 166, § 25A, and that are not required to file an annual return with the DPU?¹² *See* G.L. c. 159, § 12(d); G.L. c. 166, § 25A; G.L. c. 25C, § 9. Should the Department exempt small pole owners from these requirements as the FCC has done in the past? *See In re Separation of costs of regulated tel.*

¹² The DPU states that pole owners required to file annual returns with the DPU are those required to do so pursuant to G.L. c. 164, §§ 53, 63, 81, 83, G.L. c. 165, § 2, 220 C.M.R. §§ 51.00, 79.02, and 79.04, and D.P.U. 4240-62-A, *Order* (Jan. 10, 1962). DPU Further Comment at 3.

serv. from costs of nonregulated activities, Report & Order, 2 FCC Rcd. 1298 (1987). If so, how, exactly should the Department tailor the exemption? Some utility poles are owned by MLPs, organized pursuant to G.L. c. 164, § 34, or MLP cooperatives, organized pursuant to G.L. c. 164, § 47C. Those MLPs which distribute electricity as well as telecommunications services, pursuant to G.L. c. 164, § 47E, are required to file annual returns with the DPU. DPU Comment at 4 n.5. Those MLPs that provide only telecommunications services, however, do not file annual returns with the Department or the DPU. The Department seeks comment on whether it should require those MLP pole owners to file Pole Owner Reports. The Department also seeks comment on whether owners of other poles, such as monopoles, installed in the public rights-of-ways should be required to file Pole Owner Reports.

VII. CONCLUSION

The Department believes that the proposals outlined above adequately balance any burdens on all stakeholders and the Department's mandate to protect consumers and ensure just and reasonable pole attachment rates, terms, and conditions. The attached Notice of Public Hearing provides further detail on the public hearing, the public comment process, and the intervention process in this proceeding.

Exhibit - Proposed Pole Owner Report

POLE OWNER REPORT

Reporting Entity: _____ Year Ending: December 31, ____
Filing Date: _____

Investment in Poles

Gross Investment in Poles	\$ _____
Accumulated Depreciation (Poles)	\$ _____
Accumulated Deferred Taxes (Poles)	\$ _____
Net Investment in Appurtenance	\$ _____
Number of Pole Equivalents	_____

Pole Carrying Charges

Administrative

Administrative Expense	\$ _____
Total Plant in Service	\$ _____
Depreciation Reserve for Total Plant in Service	\$ _____
Accumulated Deferred Taxes	\$ _____

Tax (Poles)

Normalized Tax Expense	\$ _____
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Maintenance (Poles)

Maintenance Expense	\$ _____
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Depreciation

Annual Depreciation for Poles	_____ %
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Allocation of Usable Space (Poles)

Cable Attachment Space _____

Usable Space _____

Investment in Conduit

Total Gross Investment in Conduit \$ _____

Accumulated Depreciation (Conduit) \$ _____

Accumulated Deferred Taxes (Conduit) \$ _____

Net Investment in Appurtenance \$ _____

of km of Conduit Duct _____

Conduit Carrying Charges**Administrative**

Administrative Expense \$ _____

Total Plant in Service \$ _____

Depreciation Reserve for Total Plant in Service \$ _____

Accumulated Deferred Taxes \$ _____

Tax (Conduit)

Normalized Tax Expense \$ _____

Maintenance (Conduit)

Maintenance Expense \$ _____

Depreciation

Annual Depreciation for Conduit _____ %

Allocation of Usable Space (Conduit)

Total Conduit Capacity _____

Non-Usable Conduit Space _____

Is the data reported herein taken from a GAAP-compliant accounting system?

Yes ☐ No ☐

If not, please explain, specifying in what ways the filer's accounting system is not GAAP-compliant.
